IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.70 OF 2006

Niphad Sahakari Sakhar Karkhana .. Petitioners

Versus

The Minister, State Excise & Ors...Respondents

Mr.V.Joglekar with Mr.M.G.Gawde for petitioners

Mr.D.B.Sawant, for respondent No.3

Mr.Vinay Sonpal, A.G.P. for respondent State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 25th January 2006.

P.C.

. Heard learned Counsel for parties.

2. Rule. Rule made returnable forwith by consent. Respondents waive service. First respondent has by his order dated 10th September 2005, on an appeal by the 3rd respondent, directed that petitioner should change colour scheme of a lable pertaining to their product "Baby Santra". Petitioner karkhana, pursuant to the above order has been directed by respondent No.2 to stop production and sale of country liquor by utilising lable Baby Santra. The contention is that Superintendent State Excise is also prohibiting petitioner from manufacturing and selling the subject product.

3. The contention raised by Mr.Joglekar appearing for petitioners is that respondent No.3 approached the Minister (Appellate Authority) by filing an appeal in the year 2003. It is his submission that the approval of lable of petitioner is granted by the order dated 12th February 2002 and that is not under challenge in

this appeal. Surprisingly, letter dated 31st July 2003 is challenged by third respondent. Apart from the fact that the appeal is barred by limitation, it is contended that during the course of hearing, petitioners desired that copy of report which was called from the Commissioner, State Excise, about sales of respondent No.3 should be made available. The said report is dated 16th March 2003. It is his grievance that the report has been relied upon by the Minister without a copy thereof being furnished to the petitioners. Therefore, order passed by the Minister is vitiated for breach of principles of natural justice.

4. He invites my attention to the averments in the petition pertaining to the loss suffered on accont of the impugned directions.

5. Mr.Sawant, appearing for third respondent could not dispute the fact that the report was

not available and that the contents thereof have been relied upon while issuing impugned direction. Mr.Sonpal, A.G.P. states that appropriate orders be passed so that after a copy of report is made available, Appellate Authority/ Commissioner, State Excise can hear the matter afresh.

6. In my view, considering grievances made by Mr.Joglekar instead of this Court going into the factual matrix, interest of justice would be served if order passed dated 10th September 2005 in the appeal and impugned in this petition and all directions pursuant thereto are set aside and the appeal preferred by the third respondent is restored to file of appellate authority for deciding the same afresh and in accordance with law. Needless to state that the Commissioner State Excise shall make available to petitioner as well as to respondent No.3 a copy of the report of Commissioner dated 16th March 2005.

After giving full opportunity of hearing the Appellate Authority should pass appropriate orders in accordance with law. All contentions on merits are kept open. The report to be made available within a period of three weeks from today. Parties to appear before the Appellate Authority after a period of five weeks from today. Appellate Authority shall endeavour to dispose of the appeal within a period of eight weeks from the date of appearance of the parties.

7. Needless to state that in the light of the above directions the order dated 10th September 2005 and directions contained in the letter dated 24th October 2005 and 17th November 2005 (Exh.J and K to this petition) are set aside. All contentions on merits are expressly kept open.

(S.C.DHARMADHIKARI, J)